



# House of Representatives

General Assembly

**File No. 673**

*January Session, 2015*

Substitute House Bill No. 6283

*House of Representatives, April 16, 2015*

The Committee on Public Health reported through REP. RITTER of the 1st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT REGULATING ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2015*) (a) As used in this section  
2 and sections 2 and 3 of this act:

3 (1) "Child care facility" means a provider of child day care services  
4 as defined in section 19a-77 of the general statutes, or a person or  
5 entity required to be licensed under section 17a-145 of the general  
6 statutes;

7 (2) "Electronic nicotine delivery system" means an electronic device  
8 that may be used to simulate smoking in the delivery of nicotine or  
9 other substances to a person inhaling from the device, and includes,  
10 but is not limited to, an electronic cigarette, electronic cigar, electronic  
11 cigarillo, electronic pipe or electronic hookah and any related device  
12 and any cartridge or other component of such device;

13       (3) "Liquid nicotine container" means a container that holds a liquid  
14 substance containing nicotine that is sold, marketed or intended for  
15 use in an electronic nicotine delivery system or vapor product, except  
16 "liquid nicotine container" does not include such a container that is  
17 prefilled and sealed by the manufacturer and not intended to be  
18 opened by the consumer; and

19       (4) "Vapor product" means any product that employs a heating  
20 element, power source, electronic circuit or other electronic, chemical  
21 or mechanical means, regardless of shape or size, to produce a vapor  
22 that may or may not include nicotine, that is inhaled by the user of  
23 such product.

24       (b) (1) No person shall use an electronic nicotine delivery system or  
25 vapor product: (A) In any building or portion of a building owned and  
26 operated or leased and operated by the state or any political  
27 subdivision thereof; (B) in any area of a health care institution; (C) in  
28 any area of a retail food store; (D) in any restaurant; (E) in any area of  
29 an establishment with a permit issued for the sale of alcoholic liquor  
30 pursuant to section 30-20a, 30-21, 30-21b, 30-22, 30-22a, 30-22c, 30-26,  
31 30-28, 30-28a, 30-33a, 30-33b, 30-35a, 30-37a, 30-37e or 30-37f of the  
32 general statutes, in any area of establishment with a permit issued for  
33 the sale of alcoholic liquor pursuant to section 30-23 of the general  
34 statutes issued after May 1, 2003, or the bar area of a bowling  
35 establishment holding a permit pursuant to subsection (a) of section  
36 30-37c of the general statutes; (F) within a school building while school  
37 is in session or student activities are being conducted; (G) within a  
38 child care facility, except, if the child care facility is a family day care  
39 home as defined in section 19a-77 of the general statutes, such use is  
40 prohibited only when a child enrolled in such home is present; (H) in  
41 any passenger elevator, provided no person shall be arrested for  
42 violating this subsection unless there is posted in such elevator a sign  
43 which indicates that such use is prohibited by state law; (I) in any  
44 dormitory in any public or private institution of higher education; or  
45 (J) in any area of a dog race track or a facility equipped with screens for  
46 the simulcasting of off-track betting race programs or jai alai games.

47 For purposes of this subsection, "restaurant" means space, in a suitable  
48 and permanent building, kept, used, maintained, advertised and held  
49 out to the public to be a place where meals are regularly served to the  
50 public.

51 (2) This section shall not apply to (A) correctional facilities; (B)  
52 designated smoking areas in psychiatric facilities; (C) public housing  
53 projects, as defined in subsection (b) of section 21a-278a of the general  
54 statutes; (D) classrooms where a demonstration of the use of an  
55 electronic nicotine delivery system or vapor product is taking place as  
56 part of a medical or scientific experiment or lesson; (E) establishments  
57 without a permit for the sale of alcoholic liquor that sell electronic  
58 nicotine delivery systems, vapor products or liquid nicotine containers  
59 on-site and allow their customers to use such systems, products or  
60 containers on-site; (F) smoking rooms provided by employers for  
61 employees, pursuant to section 31-40q of the general statutes; (G)  
62 notwithstanding the provisions of subparagraph (E) of subdivision (1)  
63 of this subsection, the outdoor portion of the premises of any permittee  
64 listed in subparagraph (E) of subdivision (1) of this subsection,  
65 provided, in the case of any seating area maintained for the service of  
66 food, at least seventy-five per cent of the outdoor seating capacity is an  
67 area in which smoking is prohibited and which is clearly designated  
68 with written signage as a nonsmoking area, except that any temporary  
69 seating area established for special events and not used on a regular  
70 basis shall not be subject to the prohibition on the use of an electronic  
71 nicotine delivery system or vapor product or the signage requirements  
72 of this subparagraph; or (H) any tobacco bar, provided no tobacco bar  
73 shall expand in size or change its location from its size or location as of  
74 October 1, 2015. For purposes of this subdivision, "outdoor" means an  
75 area which has no roof or other ceiling enclosure, "tobacco bar" means  
76 an establishment with a permit for the sale of alcoholic liquor to  
77 consumers issued pursuant to chapter 545 of the general statutes that,  
78 in the calendar year ending December 31, 2015, generated ten per cent  
79 or more of its total annual gross income from the on-site sale of tobacco  
80 products and the rental of on-site humidors, and "tobacco product"  
81 means any substance that contains tobacco, including, but not limited

82 to, cigarettes, cigars, pipe tobacco or chewing tobacco.

83 (c) The operator of a hotel, motel or similar lodging may allow  
84 guests to use an electronic nicotine delivery system or vapor product  
85 in not more than twenty-five per cent of the rooms offered as  
86 accommodations to guests.

87 (d) In each room, elevator, area or building in which the use of an  
88 electronic nicotine delivery system or vapor product is prohibited by  
89 this section, the person in control of the premises shall post or cause to  
90 be posted in a conspicuous place signs stating that such use is  
91 prohibited by state law. Such signs, except in elevators, restaurants,  
92 establishments with permits to sell alcoholic liquor to consumers  
93 issued pursuant to chapter 545 of the general statutes, hotels, motels or  
94 similar lodgings, and health care institutions, shall have letters at least  
95 four inches high with the principal strokes of letters not less than one-  
96 half inch wide.

97 (e) Any person found guilty of using an electronic nicotine delivery  
98 system or vapor product in violation of this section, failure to post  
99 signs as required by this section or the unauthorized removal of such  
100 signs shall have committed an infraction.

101 (f) Nothing in this section shall be construed to require the  
102 designation of any area for the use of electronic nicotine delivery  
103 system or vapor product in any building.

104 (g) The provisions of this section shall supersede and preempt the  
105 provisions of any municipal law or ordinance relative to the use of an  
106 electronic nicotine delivery system or vapor product effective prior to,  
107 on or after October 1, 2015.

108 (h) The Department of Public Health shall adopt regulations, in  
109 accordance with chapter 54 of the general statutes, to implement the  
110 provisions of this section.

111 Sec. 2. (NEW) (*Effective October 1, 2015*) Any liquid nicotine  
112 container that is sold at retail in this state shall satisfy the child-

113 resistant effectiveness specifications set forth in 16 CFR 1700.15(b), as  
114 in effect on October 1, 2015.

115       Sec. 3. (*Effective October 1, 2015*) Not later than thirty days after the  
116 federal Food and Drug Administration's proposed rule regarding  
117 tobacco products deemed to be subject to the federal Food, Drug and  
118 Cosmetic Act, 21 CFR Parts 1100, 1140 and 1143, becomes final, the  
119 joint standing committee of the General Assembly having cognizance  
120 of matters relating to public health shall hold a public hearing for  
121 purposes of reviewing such rule and determining whether it  
122 recommends legislation concerning products, including, but not  
123 limited to, electronic nicotine delivery systems, vapor products and  
124 liquid nicotine containers, in response to such rule.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	New section
Sec. 2	<i>October 1, 2015</i>	New section
Sec. 3	<i>October 1, 2015</i>	New section

**PH**       *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
Consumer Protection, Dept.	GF - Cost	58,278	77,703
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	20,785	27,713

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

The bill results in a cost to the state of \$79,063 in FY 16 and \$105,416 in FY 17 to enforce section 2.

Section 2 of the bill would require the Department of Consumer Protection's (DCP) Drug Control Division to be responsible for the enforcement of the child-resistant effectiveness set forth by the Consumer Product Safety Commission. It is estimated that there could be up to 4,000 retail establishments throughout Connecticut that sell e-cigs and/or liquid nicotine containers. There are also approximately 100 tobacco wholesalers (registered with the Department of Revenue Services) who may sell e-cigs and/or liquid nicotine containers. DCP would expect to inspect and conduct an education campaign, as well as receive complaints against non-compliant retailers and wholesalers; investigate; remove product from shelves; conduct compliance meetings and administrative hearings in conjunction with this requirement.

The DCP would require a Drug Control Agent (HC-28) with car and

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16 and FY 17.

field expenses to enforce this new provision. This results in a total cost of \$79,063 in FY 16 and \$105,416 in FY 17. The cost in FY 16 (three-quarter year funding) includes Personnel Services (\$53,778), Other Expenses (\$4,500) and Fringe Benefits (\$20,785). The cost in FY 17 includes Personnel Services (\$71,703), Other Expenses (\$6,000) and Fringe Benefits (\$27,713).

The bill's requirement of the development of regulations by the Department of Public Health results in no fiscal impact as they have the required expertise necessary to complete the task.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 6283*****AN ACT REGULATING ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS.*****SUMMARY:**

This bill imposes restrictions on the use of “electronic nicotine delivery systems” and “vapor products” (collectively called e-cigarettes in this analysis) in certain establishments and public areas that are similar to existing restrictions on smoking in such areas. In doing so, it:

1. prohibits the use of e-cigarettes in state buildings, restaurants, places serving alcohol, schools, child care facilities, and health care facilities, among other areas;
2. makes exceptions for e-cigarette use in certain areas and facilities, including designated smoking areas, tobacco bars, and outdoor areas in establishments serving alcohol;
3. permits hotel and motel operators to allow e-cigarette use in up to 25 percent of rooms;
4. requires signs in areas where e-cigarette use is prohibited;
5. establishes penalties for violations of the bill; and
6. specifies that nothing in the bill requires the designation of an area in a building for e-cigarette use.

The bill also requires any liquid nicotine containers sold in Connecticut to meet child resistant standards.

Under the bill, the Public Health Committee must hold a hearing to determine whether any legislation is needed after the Federal Drug



Administration (FDA) finalizes a rule that could impose federal regulations on e-cigarettes.

Finally, the bill (1) specifies that it supersedes and preempts municipal laws or ordinances on e-cigarette use and (2) authorizes the public health commissioner to adopt regulations to implement the bill.

EFFECTIVE DATE: October 1, 2015

## **ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS**

Under the act, an “electronic nicotine delivery system” is an electronic device used to simulate smoking in delivering nicotine or another substance to a person who inhales from it. Such systems include electronic (1) cigarettes; (2) cigars; (3) cigarillos; (4) pipes; (5) hookahs; and (6) related devices, cartridges, or other components.

A “vapor product” uses a heating element; power source; electronic circuit; or other electronic, chemical, or mechanical means, regardless of shape or size, to produce a vapor the user inhales. The vapor may or may not include nicotine.

## **E-CIGARETTE USE IN CERTAIN ESTABLISHMENTS AND PUBLIC AREAS**

### ***Where Use Is Prohibited***

The bill prohibits e-cigarette use in the following places:

1. buildings owned or leased and operated by the state or its political subdivisions;
2. health care institutions;
3. retail food stores;
4. restaurants (see below);
5. places that serve alcohol under specified permits (see below);
6. school buildings during school or student activities;

7. specified child care facilities (see below);
8. passenger elevators;
9. dormitories at a public or private higher education institution;  
and
10. dog race tracks or facilities equipped with screens for simulcasting off-track betting racing programs or jai alai games.

Under the bill, a restaurant is a space, in a suitable and permanent building, kept, used, maintained, advertised, and held out to the public as a place where meals are regularly served to the public.

E-cigarette use is prohibited in establishments that serve alcohol under the following permits: university; hotel; resort; restaurant; café; juice bar; tavern; railroad; airline; coliseum or coliseum concession; special sporting facility; nonprofit theater or public museum; or airport, airport restaurant, bar, concession, or airline club. E-cigarette use is also prohibited in (1) any club issued a permit after May 1, 2003 to serve alcohol and (2) the bar areas of bowling establishments that hold such a permit.

Finally, under the bill, a “child care facility” is a child day care center, group day care home, family day care home, or any child care facility that must be licensed by the Department of Children and Families. The bill specifies that the prohibition on e-cigarette use applies only in homes used for family day care when a child enrolled in the day care is present.

By law:

1. child day care centers offer or provide supplementary care to more than 12 related or unrelated children outside their own homes on a regular basis;
2. group day care homes offer or provide supplementary care to seven to 12 related or unrelated children on a regular basis or

that meet the definition of a family day care home except that they do not operate in a private family home; and

3. family day care homes are private family homes that generally provide care, on a regularly recurring basis, for up to six children, including the provider's children, not in school full time, between three and 12 hours during a 24-hour period (CGS § 19a-77).

### **Exceptions**

Under the bill, the prohibition on e-cigarette use does not apply to:

1. correctional facilities;
2. designated smoking areas in psychiatric facilities;
3. public housing projects;
4. classrooms, during e-cigarette demonstrations that are part of a medical or scientific experiment or lesson;
5. smoking rooms provided by employers for employees;
6. outdoor portions of places serving alcohol, under certain circumstances (see below); and
7. tobacco bars, provided they do not expand or change their location as of October 1, 2015.

Establishments serving alcohol where using e-cigarettes is generally prohibited under the bill may permit e-cigarette use in outdoor areas (i.e., areas with no roof or other ceiling enclosure). If they choose to do so, they must prohibit e-cigarette use in at least 75 percent of outdoor areas where food is served and designate such areas with a sign as "nonsmoking." Any temporary seating area for special events in such establishments is not subject to the prohibition on e-cigarette use or signage requirements.

Under the bill, a "tobacco bar" is a bar that has a permit to sell

alcohol and, in the calendar year ending December 31, 2015, generated 10 percent or more of its annual gross income from on-site tobacco product sales and humidor rentals.

The bill also permits hotel, motel, or similar lodging operators to allow guests to use e-cigarettes in up to 25 percent of rooms offered as guest accommodations.

### ***Signage***

In each room, elevator, area, or building in which e-cigarette use is prohibited by the bill, the person in control of the premises must post or have someone post a sign indicating that e-cigarette use is prohibited by state law. Generally, the signs must have letters at least four inches high with principal strokes at least one-half inch wide. The bill exempts elevators, restaurants, establishments that serve alcohol, hotels, motels, other lodgings, and healthcare institutions from the letter-size requirements.

### ***Penalties***

Under the bill, a person commits an infraction if he or she is found guilty of (1) using an e-cigarette where prohibited by the bill, (2) failing to post required signs, or (3) removing the signs without authorization. The bill specifies that a person may be arrested for using an e-cigarette in an elevator only if there is a sign indicating that doing so is prohibited.

### **CHILD RESISTANCE**

The bill requires any liquid nicotine container sold in Connecticut to satisfy federal child resistance effectiveness specifications. Under the bill, a "liquid nicotine container" is a container that holds a liquid substance containing nicotine that is sold, marketed, or intended for use in e-cigarettes. Containers prefilled and sealed by the manufacturers and not intended to be opened by the consumer are not considered "liquid nicotine containers."

### **HEARING FOLLOWING FINAL FDA RULE**

The bill requires the Public Health Committee to hold a public hearing within 30 days of the finalization of the FDA's proposed rule on tobacco products deemed subject to the Food, Drug, and Cosmetic Act. The act gives the FDA the authority to regulate cigarettes, smokeless tobacco, and any other tobacco products that the FDA determines, by regulation, to be subject to the law. Part of the proposed FDA rule would deem e-cigarettes to be tobacco products, thus subjecting them to many of the restrictions that currently apply to cigarettes (e.g., requiring submission of ingredient list and reporting of harmful and potentially harmful ingredients).

At the hearing required by the bill, the committee must review the FDA rule and determine whether it recommends legislation on tobacco products, including e-cigarettes and liquid nicotine containers.

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable Substitute

Yea    21      Nay   4      (03/30/2015)